

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CONNIE WILLIAMS,

Plaintiff,

v.

THE CITY OF LAS VEGAS, a Nevada
municipality; DOES 1-10, inclusive; ROE
CORPORATIONS 1-10, inclusive,

Defendants.

2:08-CV-01344-LRH-GWF

ORDER

Before the court is Defendant City of Las Vegas' Motion for Summary Judgment (#19¹). Plaintiff Connie Williams has filed an opposition (#22) to which the City replied (#25).

I. Facts and Procedural History

This is an employment discrimination and retaliation dispute arising out of Plaintiff's work in the City's Department of Neighborhood Services. In 1985, Plaintiff began her employment with the City in the Department of Detention and Enforcement, working as a corrections officer, corrections sergeant, and corrections counselor.

During her tenure in Detention and Enforcement, Plaintiff was diagnosed with reactive airway disease. Based on the disease, Plaintiff successfully pursued a worker's compensation claim

¹Refers to the court's docket entry number.

1 against the City. Plaintiff subsequently filed a claim against the City under the Americans with
2 Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, concerning the air quality at the City’s
3 detention center.

4 In October of 2005, all of the civilian corrections counselors in Detention and Enforcement,
5 including Plaintiff, were transferred to the Department of Neighborhood Services. The City
6 assigned Plaintiff and the other caseworkers to work in the EVOLVE program, which provides
7 workforce development and support services to ex-offenders, chronic inebriates, and the homeless.

8 Within the EVOLVE program, Plaintiff was assigned solely to the Emergency Housing
9 Assistance Program (“EHAP”). EHAP participants receive one-time assistance from the EHAP
10 counselors to help them overcome a short-term crisis. Thus, as an EHAP counselor, Plaintiff had
11 little to no ongoing case management responsibilities. From February, 2006, through February,
12 2007, Plaintiff had an average caseload of 73 cases. During the same time period, other
13 caseworkers working within the EVOLVE program had caseloads ranging between 46 and 111
14 cases, with an average of 77 cases per caseworker.

15 From June 19, 2006, to June 30, 2006, and from August 31, 2006, to September 27, 2006,
16 Plaintiff took leave under the Family Medical Leave Act to undergo knee surgery. During
17 Plaintiff’s absences, the City assigned Stacy Youngblood, another caseworker, to field phone calls
18 and take basic information for Plaintiff until she returned. At the time, Youngblood was working
19 in the Women in Transition Program and the Prisoners Reentry Program and had an existing
20 caseload of 89 cases.

21 On September 29, 2006, the City erroneously informed Plaintiff and two other employees
22 that after they transferred from Detention and Enforcement to Neighborhood Services, they did not
23 carry over their seniority. This error was corrected in November of 2006.

24 Also in November of 2006, while at the EHAP office, Plaintiff began having problems
25 breathing. Plaintiff believed that this problem was a result of the heater in the building. Plaintiff
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1 complained to her union representative, and the union representative had Plaintiff discuss the issue
2 with the City's Safety Officer. Following the meeting, a City representative came to Plaintiff's
3 office to check the air quality. The results of this check are not clear because, on December 22,
4 2006, before the City made any changes related to the air quality in her office, Plaintiff resigned. In
5 her exit interview, Plaintiff stated she was resigning because she was "burned out" and trying "to
6 regain health." (Def.'s Mot. Summ. J. (#19), Ex. F.)

7 On June 18, 2007, Plaintiff filed a Charge of Discrimination with the Nevada Equal Rights
8 Commission. In the charge, Plaintiff alleged claims for disability-based discrimination, retaliation,
9 and constructive discharge. On March 10, 2008, the Nevada Equal Rights Commission informed
10 Plaintiff that the "evidence does not meet the legal standard to determine that a violation ha[d]
11 occurred." (Def.'s Mot. Summ. J. (#19), Ex. I.)

12 Plaintiff initiated the present action in the District Court for Clark County, Nevada, on July
13 10, 2008. The City subsequently removed the case to this court.

14 **II. Legal Standard**

15 Summary judgment is appropriate only when "the pleadings, depositions, answers to
16 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
17 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
18 law." Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
19 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable
20 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
21 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

22 The moving party bears the burden of informing the court of the basis for its motion, along
23 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
24 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
25 must make a showing that is "sufficient for the court to hold that no reasonable trier of fact could
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1 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
2 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

3 To successfully rebut a motion for summary judgment, the non-moving party must point to
4 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*
5 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might
6 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
7 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary
8 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute
9 regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could
10 return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a
11 scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a genuine
12 dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at
13 252.

14 **III. Discussion**

15 In the complaint, Plaintiff alleges the following claims for relief: (1) discrimination; (2)
16 retaliation; (3) negligent supervision; (4) intentional infliction of emotional distress; and (5)
17 “wrongful termination/constructive discharge.”² The City seeks summary judgment on each of
18 Plaintiff’s federal claims and asks that the court decline to exercise supplemental jurisdiction over
19 Plaintiff’s remaining state law claims.

20 **A. Discrimination**

21 The ADA prohibits an employer from discriminating against a “qualified individual on the
22 basis of disability in regard to job application procedures, hiring, advancement, or discharge of
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24 ²In the complaint, Plaintiff also states that she was subjected to a hostile work environment. Although
25 it is not clear whether she intended to allege this as a separate claim for relief, no evidence before the court
26 suggests that she was subjected to the type of severe and pervasive harassment requirement to support a hostile
work environment claim. *See Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 270-71 (2001).

1 employees, employee compensation, job training, and other terms, conditions, and privileges of
2 employment.” 42 U.S.C. § 12112(a). The ADA contemplates two types of discrimination: (1)
3 disparate treatment and (2) failure to accommodate. *See McGary v. City of Portland*, 386 F.3d
4 1259, 1265-66 (9th Cir. 2004) (citations omitted). The court will address each of these theories
5 below.

6 **1. Disparate Treatment**

7 The plaintiff in a disparate treatment discrimination case has the initial burden of
8 establishing a prima facie case of discrimination. *See Raytheon Co. v. Hernandez*, 540 U.S. 44, 49-
9 50 (2003) (applying burden-shifting analysis to ADA discrimination claim). To do so, the plaintiff
10 must demonstrate that she (1) is disabled within the meaning of the ADA, (2) is qualified for her
11 position, and (3) suffered an adverse employment action because of her disability. *Snead v. Metro.*
12 *Prop. & Cas. Ins. Co.*, 237 F.3d 1080, 1087 (9th Cir. 2001) (citation omitted).

13 The City contends that Plaintiff has failed to establish a prima face case of discrimination
14 because she cannot demonstrate that she was subject to an adverse employment action because of
15 her disability. An adverse employment action is “any action reasonably likely to deter employees
16 from engaging in protected activity.” *Pardi v. Kaiser Permanente Hosp., Inc.*, 389 F.3d 840, 850
17 (9th Cir. 2004) (internal quotation marks and citation omitted). Plaintiff identifies the following as
18 adverse employment actions: (1) receiving a disproportionately heavy caseload; (2) being assigned
19 the work load of other employees; (3) having her request for assistance with her caseload denied;
20 (4) being treated negatively by her supervisor, Cedric Cole; and (5) being retaliated against for
21 filing suit against the City.

22 The court finds that, even assuming Plaintiff had some evidence to support these
23 allegations, no evidence before the court suggests that the City took these actions because of
24 Plaintiff’s disability. Although the ADA does not require that an employer take the adverse
25 employment action solely because of the plaintiff’s disability, the disability must be a motivating
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1 factor in the employment decision. *Head v. Glacier Nw.*, 413 F.3d 1053, 1065 (9th Cir. 2005).
 2 Here, there is no indication in the evidence that the City's actions were in any way related to
 3 Plaintiff's disability. Accordingly, the court will grant summary judgment as to Plaintiff's
 4 discrimination claim.

5 **2. Reasonable Accommodation**

6 A discrimination claim under the ADA can also arise where an employer fails to make a
 7 reasonable accommodation for an employee's disability. *McGary*, 386 F.3d at 1265-66 (citations
 8 omitted). Here, Plaintiff alleges the City failed to reasonably accommodate her reactive airway
 9 disease by refusing to improve the air quality in her office.

10 The ADA "prohibits an employer from discriminating against an 'individual with a
 11 disability' who, with 'reasonable accommodation,' can perform the essential functions of the job."
 12 *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 393 (2002) (citing 42 U.S.C. §§ 12112(a), (b)).
 13 "Once an employer becomes aware of the need for accommodation, that employer has a mandatory
 14 obligation under the ADA to engage in an interactive process with the employee to identify and
 15 implement appropriate reasonable accommodations." *Humphrey v. Mem'l Hospitals Ass'n*, 239
 16 F.3d 1128, 1137 (9th Cir. 2001) (citation omitted).

17 To initiate the interactive process, the employee need only "inform the employer of the need
 18 for an adjustment due to a medical condition." *Zivkovic v. S. Cal. Edison Co.*, 301 F.3d 1080, 1089
 19 (9th Cir. 2002) (citation omitted). Once the employee has requested an accommodation, the
 20 interactive process requires the following: (1) direct communication between the employer and the
 21 employee to explore in good faith the possible accommodations; (2) consideration of the
 22 employee's request; and (3) offering an accommodation that is reasonable and effective. *Id.*
 23 (citation omitted). Although an employer need not provide the employee with the specific
 24 accommodation she requests or prefers, the accommodation must be reasonable in that it enables
 25 the employee to perform the duties of her position. *Zivkovic*, 302 F.3d at 1089 (citation omitted).
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1 Here, Plaintiff initiated the interactive process by complaining to her union representative
2 about her breathing problems. The union representative reported Plaintiff's complaint to the safety
3 officer for the City and brought Plaintiff to speak with the safety officer. Plaintiff testified that
4 following the meeting, the City came to her office building and checked the air quality conditions.
5 Plaintiff further testified that she does not know what occurred after the City checked her building
6 because she resigned. In her affidavit she states that she resigned because she "felt that the City
7 was not going to take the appropriate steps to accommodate [her] diagnosed disability condition."
8 (Pl.'s Opp. (#22), Ex. 3, ¶ 6.)

9 Thus, it is undisputed that the City communicated with Plaintiff about her breathing issues
10 and began to investigate how it could address those issues. Before the City could offer Plaintiff a
11 reasonable and effective accommodation, however, Plaintiff resigned. Plaintiff has offered no
12 evidence supporting her belief that the City was not going to take appropriate steps to
13 accommodate her disability. Accordingly, the court finds that based on the evidence before the
14 court, no reasonable jury could conclude that the City failed to accommodate Plaintiff's disability.

15 **B. Retaliation**

16 Plaintiff alleges the City retaliated against her for filing a charge of discrimination with the
17 Equal Employment Opportunity Commission and for her related law suit concerning the air quality
18 at the City's detention center. To establish a prima facie case of retaliation under the ADA, the
19 plaintiff must show the following: (1) she engaged in a protected activity, (2) she suffered an
20 adverse employment action, and (3) there is a causal connection between the two. *Pardi v. Kaiser*
21 *Pemanente Hosp., Inc.*, 389 F.3d 840, 849 (9th Cir. 2004) (citation omitted). If the plaintiff
22 establishes a prima facie case, the burden shifts to the defendant to offer a legitimate reason for the
23 adverse employment action. *Id.* If the defendant meets its burden, the burden returns to the
24 plaintiff to demonstrate that the defendant's reason is pretextual. *Id.*

25 Plaintiff has failed to present evidence suggesting that any City employee with whom she
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1 worked in the Department of Neighborhood Services was aware of her EEOC complaint or
2 subsequent lawsuit. Likewise, no evidence before the court suggests that any City employee with
3 control over Plaintiff's employment, including her direct supervisors, had knowledge of Plaintiff's
4 protected activity. Plaintiff argues that the timing of her complaints and the allegedly adverse
5 actions suggests a causal connection between the two. However, Plaintiff filed her EEOC charge in
6 2005, and her lawsuit in 2006, and the actions of which she complains did not occur until the latter
7 half of 2007. As such, the temporal proximity between her complaints and the allegedly adverse
8 actions does not give rise to an inference of causation. *See Cornwell v. Electra Central Credit*
9 *Union*, 439 F.3d 1018, 1036 (9th Cir. 2006) (seven-month time lapse did not show causation);
10 *Mannatt v. Bank of America, NA*, 339 F.3d 792, 802 (9th Cir. 2003) (nine-month time lapse did not
11 show causation); *see also Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001) (stating
12 that "[t]he cases that accept mere temporal proximity between an employer's knowledge of
13 protected activity and an adverse employment action as sufficient evidence of causality to establish
14 a prima facie case uniformly hold that the temporal proximity must be 'very close,'" and citing
15 cases finding a three month and four month period insufficient).

16 In sum, even assuming Plaintiff could demonstrate that she suffered an adverse employment
17 action, no reasonable jury could conclude that Plaintiff's protected activity was in any way related
18 to the adverse actions. Summary judgment on Plaintiff's retaliation claim is therefore appropriate.

19 C. State Law Claims

20 Finally, Defendants ask that the court dismiss the remaining state law claims. Under 28
21 U.S.C. § 1367(c)(3), the court may decline to exercise supplemental jurisdiction over a state law
22 claim if the "district court has dismissed all claims over which it has original jurisdiction." 28
23 U.S.C. § 1367(c)(3). Because the court has dismissed all of Plaintiff's federal claims and in light of
24 the "values of economy, convenience, fairness, and comity," the court declines to exercise
25 supplemental jurisdiction over Plaintiff's state law claims. *See Acri v. Varian Associates*, 114 F.3d
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1 999, 1001 (9th Cir. 1997) (citations omitted).

2 IT IS THEREFORE ORDERED that the City's Motion for Summary Judgment (#19) is
3 GRANTED.

4 The Clerk of the Court shall enter judgment accordingly.

5 IT IS SO ORDERED.

6 DATED this 9th day of June, 2010.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE